



TRUST AS A CONSTITUTIONAL PRECONDITION FOR GOOD REGULATION AND ENFORCEMENT IN EUROPE

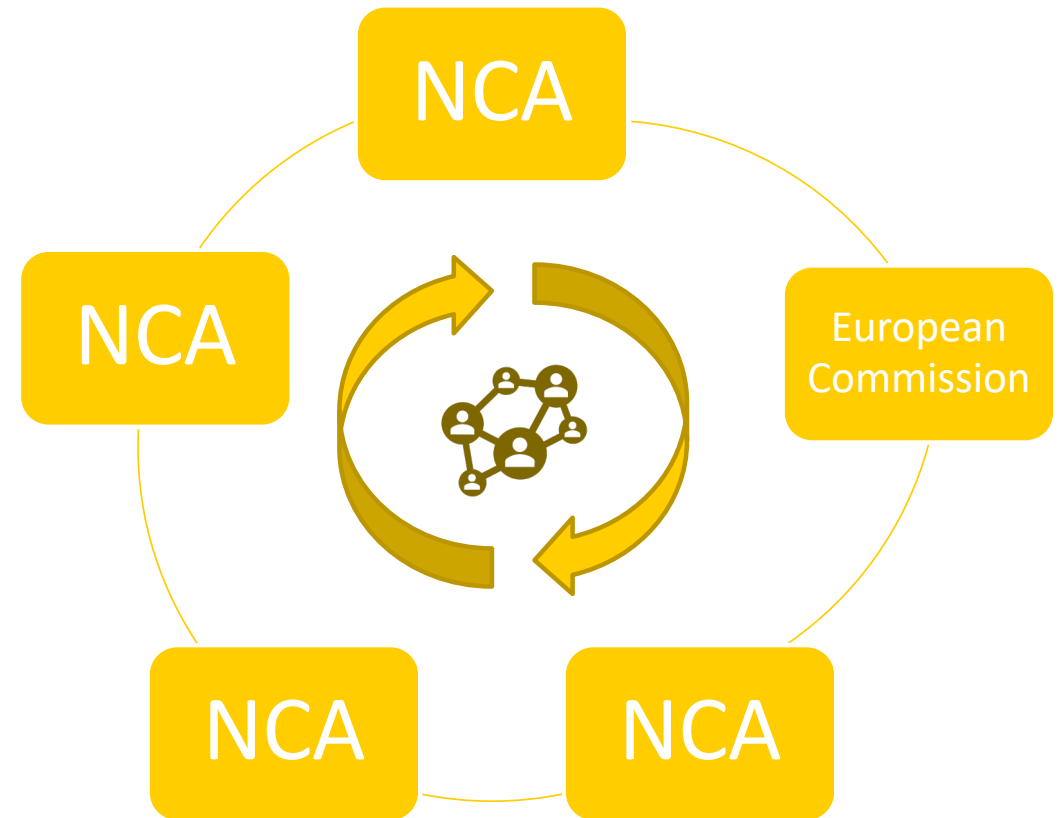
– Competition law

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How & Why?

- Decentralised system of direct application of Articles 101 and 102 TFEU
- The Commission and the NCAs (and the courts) are to apply the competition rules in close cooperation (Reg. 1/2003)
- Public and private enforcement



How does it relate to the notions of effectiveness and legitimacy?

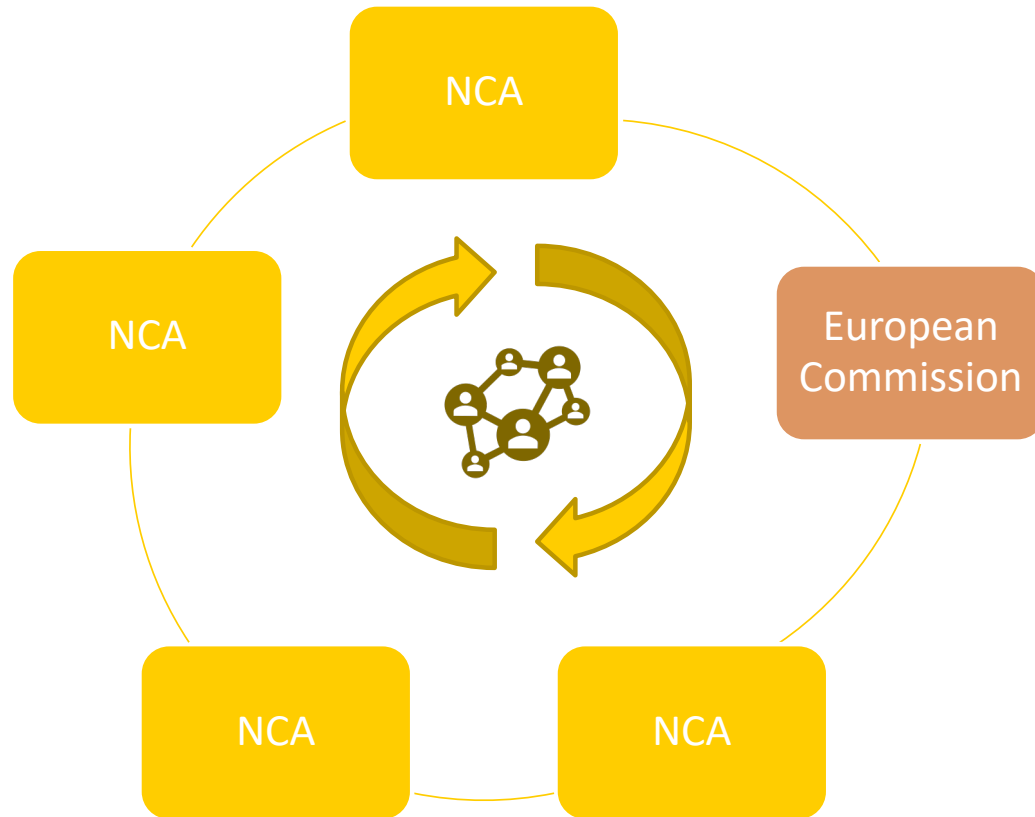
- Both Reg 1/2003 and ECN+ Directive are based on Articles 103 and 114 TFEU
- Obligation on Member States to ensure the effectiveness of Articles 101 and 102 TFEU
- ECN+ Directive requiring some degree of independence of NCAs (not yet implemented in 4 MS including Poland)
- So far, the “effectiveness” of decentralised system of 101 and 102 enforcements was the most important

To what EU/(inter)national legal principles does it connect or in what legal principles does the concept of trust translate?

- Sharing values – what values?
- Application of Art. 2 TEU in competition related cases (*Sped-Pro*)
- “[M]utual trust is itself based (...) on the commitment of each Member State to comply with its obligations under EU law and to continue to comply (...) with the values contained in Article 2 TEU, [including] the rule of law”
- Article 3 ECN+ Directive

(C-157/21, Poland v Parliament and Council, paras. 142-147; C-156/21, Hungary v Parliament and Council, paras. 124-129).

What are the biggest challenges or hurdles that need addressing to secure trust and therewith a solid basis for good regulation and enforcement?



- The role of the European Commission as the 'guardian of the Treaties'
- Coherency of the European Commission's actions (policy setting versus enforcement)
- The role of 'negative actions'
- The role of private enforcement



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Thank you!